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UNITED STATES DISTRICT COURT
DISTRICT OF OREGON

**ADIDAS AMERICA, INC. and ADIDAS-
SOLOMON A.G.,**

CV No. 03-0323 RE

Plaintiffs,

ANSWER TO COMPLAINT

v.

By Defendant CELS Enterprises, Inc.

CELS ENTERPRISES, INC.,

Defendant.

Defendant, CELS Enterprises, Inc. ("CELS"), by and through its undersigned counsel, hereby answers the Complaint filed by plaintiffs, adidas America, Inc. and adidas-Salomon AG (collectively, "adidas").

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ANSWER

1. In answer to the allegations contained in paragraph 1, CELS admits that the Complaint purports to set forth various federal and state law claims, and denies the remaining allegations set forth therein.

2. In answer to the allegations contained in paragraph 2, CELS admits that its footwear is not manufactured by adidas and that it is not affiliated with adidas, or authorized by adidas to manufacture footwear, and denies the remaining allegations set forth therein.

3. In answer to the allegations contained in paragraph 3, CELS admits that this court has jurisdiction over the subject matter of this lawsuit.

4. In answer to the allegations contained in paragraph 4, CELS admits that this court has personal jurisdiction over it.

5. In answer to the allegations contained in paragraph 5, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

6. In answer to the allegations contained in paragraph 6, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

7. In answer to the allegations contained in paragraph 7, CELS admits its principal place of business is 3485 S. La Cienega Boulevard, Los Angeles, California, and denies the remaining allegations set forth therein.

8. In answer to the allegations contained in paragraph 8, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

9. In answer to the allegations contained in paragraph 9, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

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10. In answer to the allegations contained in paragraph 10, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

11. In answer to the allegations contained in paragraph 11, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

12. In answer to the allegations contained in paragraph 12, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

13. In answer to the allegations contained in paragraph 13, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

14. In answer to the allegations contained in paragraph 14, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

15. In answer to the allegations contained in paragraph 15, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

16. In answer to the allegations contained in paragraph 16, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

17. In answer to the allegations contained in paragraph 17, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

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18. In answer to the allegations contained in paragraph 18, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

19. In answer to the allegations contained in paragraph 19, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

20. In answer to the allegations contained in paragraph 20, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

21. In answer to the allegations contained in paragraph 21, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

22. In answer to the allegations contained in paragraph 22, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

23. In answer to the allegations contained in paragraph 23, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations set forth therein and therefore denies the same.

24. In answer to the allegations contained in paragraph 24, CELS admits that it designs, markets, and sells footwear, including the models depicted in paragraph 24 of the Complaint, and denies the remaining allegations set forth therein.

25. In answer to the allegations contained in paragraph 25, CELS admits that it sells a shoe under the name "Hero" and that a version of the "Hero" appears to be depicted in the photograph contained in the Complaint, and denies the remaining allegations set forth therein.

26. In answer to the allegations contained in paragraph 26, CELS admits that it was familiar with the adidas Three Stripe Mark and the “Mei” design when it designed the “Hero” and denies the remaining allegations set forth therein.

27. In answer to the allegations contained in paragraph 27, CELS admits the same.

28. In answer to the allegations contained in paragraph 28, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

29. In answer to the allegations contained in paragraph 29, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

30. In answer to the allegations contained in paragraph 30, CELS denies the same.

31. In answer to the allegations contained in paragraph 31, CELS denies the same.

32. In answer to the allegations contained in paragraph 32, CELS denies the same.

33. In answer to the allegations contained in paragraph 33, CELS denies the same.

34. Paragraph 34 requires neither an admission nor a denial from CELS.

35. In answer to the allegations contained in paragraph 35, CELS denies the same.

36. In answer to the allegations contained in paragraph 36, CELS denies the same.

37. In answer to the allegations contained in paragraph 37, CELS denies the same.

38. In answer to the allegations contained in paragraph 38, CELS denies the same.

39. Paragraph 39 requires neither an admission nor a denial from CELS.

40. In answer to the allegations contained in paragraph 40, CELS denies the same.

41. In answer to the allegations contained in paragraph 41, CELS denies the same.

42. In answer to the allegations contained in paragraph 42, CELS denies the same.

43. In answer to the allegations contained in paragraph 43, CELS denies the same.

44. Paragraph 44 requires neither an admission nor a denial from CELS.

45. In answer to the allegations contained in paragraph 45, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

46. In answer to the allegations contained in paragraph 46, CELS denies the same.

47. In answer to the allegations contained in paragraph 47, CELS denies the same.

48. In answer to the allegations contained in paragraph 48, CELS denies the same.

49. Paragraph 49 requires neither an admission nor a denial from CELS.

50. In answer to the allegations contained in paragraph 50, CELS lacks knowledge or information sufficient to form a belief as to the truth of the allegations contained therein and therefore denies the same.

51. In answer to the allegations contained in paragraph 51, CELS denies the same.

52. In answer to the allegations contained in paragraph 52, CELS denies the same.

53. Paragraph 53 requires neither an admission nor a denial from CELS.

54. In answer to the allegations contained in paragraph 54, CELS denies the same.

55. In answer to the allegations contained in paragraph 55, CELS denies the same.

56. In answer to the allegations contained in paragraph 56, CELS denies the same.

57. In answer to the allegations contained in paragraph 57, CELS denies the same.

58. Paragraph 58 requires neither an admission nor a denial from CELS.

59. In answer to the allegations contained in paragraph 59, CELS denies the same.

60. In answer to the allegations contained in paragraph 60, CELS denies the same.

CELS' FIRST AFFIRMATIVE DEFENSE

61. adidas' Complaint fails to state a claim upon which relief may be granted.

CELS' SECOND AFFIRMATIVE DEFENSE

62. adidas' claim is barred because of its attempted misuse of its trademarks to acquire a monopoly in violation of U.S. antitrust laws.

CELS' THIRD AFFIRMATIVE DEFENSE

63. adidas has acquiesced to CELS manufacture and sale of the products complained of herein.

CELS' FOURTH AFFIRMATIVE DEFENSE

64. adidas has unclean hands and are thereby barred from obtaining the relief it seeks.

CELS' FIFTH AFFIRMATIVE DEFENSE

65. adidas has abandoned any claims that its rights are infringed by the manufacturing, use, or sale of footwear bearing stripes other than three in number.

CELS' SIXTH AFFIRMATIVE DEFENSE

66. CELS' alleged infringing activities constitute protected fair use.

CELS' SEVENTH AFFIRMATIVE DEFENSE

67. The products sold by CELS bear CELS' trademarks and other indicia that they are manufactured, marketed, and sold by CELS and therefore preclude a likelihood of confusion.

CELS' EIGHTH AFFIRMATIVE DEFENSE

68. There is no likelihood of confusion between CELS' footwear and footwear bearing the Three Stripe Mark manufactured and sold by adidas.

CELS' EIGHTH AFFIRMATIVE DEFENSE

69. adidas' claims alleged in the Complaint are barred by laches, estoppel, and/or waiver.

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WHEREFORE, CELS respectfully requests that the Court: dismiss with prejudice all claims for relief set forth in the Complaint; award CELS its reasonable attorneys' fees, costs, and disbursements; and award CELS such other legal and equitable relief as the court deems just and proper.

DATED: May 5, 2003.

LANE POWELL SPEARS LUBERSKY LLP

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Attorneys for Defendant

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CERTIFICATE OF SERVICE

I hereby certify that on May 5, 2003 I caused to be served a copy of the foregoing **ANSWER TO COMPLAINT** on the following person(s) in the manner indicated below at the following address:

Stephen M. Feldman
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- ☒ by **CM/ECF** on Stephen M. Feldman and Thomas R. Johnson only.
- ☐ by **Electronic Mail**
- ☐ by **Facsimile Transmission**
- ☒ by **First Class Mail**
- ☐ by **Hand Delivery**
- ☐ by **Overnight Delivery**

s/ Kenneth R. Davis, II
Kenneth R. Davis, II

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